

KOBAYASHI SUGITA & GODA, LLP

JOSEPH A. STEWART 7315-0

AARON R. MUN 9779-0

STEPHEN G.K. KANESHIRO 11295-0

First Hawaiian Center

999 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

jas@ksglaw.com

arm@ksglaw.com

sgk@ksglaw.com

Attorneys for Defendant

HAWAIIAN ELECTRIC COMPANY, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

MISAKI'S, INC., a Hawaii Corporation,

Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,
INC., a for-profit Hawaii Corporation,

Defendant.

CIVIL NO. _____

DEFENDANT HAWAIIAN
ELECTRIC COMPANY, INC.'S
NOTICE OF REMOVAL OF STATE
COURT ACTION TO FEDERAL
COURT; DECLARATION OF
JOSEPH A. STEWART; EXHIBITS
"A"–"B"; CERTIFICATE OF
SERVICE

**DEFENDANT HAWAIIAN ELECTRIC COMPANY, INC.'S NOTICE OF
REMOVAL OF STATE COURT ACTION TO FEDERAL COURT**

Defendant HAWAIIAN ELECTRIC COMPANY, INC. ("Hawaiian
Electric"), by and through its attorneys, Kobayashi Sugita & Goda, LLP, hereby
gives notice of removal to the United States District Court for the District of

Hawaii of the state court action captioned *Misaki's, Inc. v. Hawaiian Electric Company*, Civil No. 2CCV-21-0000362, filed in the Circuit Court of the Second Circuit, State of Hawaii (“**State Action**”) on November 24, 2021. Hawaiian Electric files this Notice of Removal under 28 U.S.C. §§ 1331, 1441(a), and 1446 and bases this notice on the following:

BACKGROUND

1. On November 24, 2021 Plaintiff MISAKI’S INC. (“**Plaintiff**”) filed its Complaint in the State Action against Hawaiian Electric. A copy of the Complaint is attached as **Exhibit “A”**. *See* Decl. of Joseph A. Stewart ¶ 2.
2. Hawaiian Electric was served with the summons and Complaint on November 30, 2021.
3. Hawaiian Electric, the sole defendant, consents to removal of this action.
4. No previous requests for removal have been made by any party to the State Action. *See* Decl. of Joseph A. Stewart ¶ 3.
5. Venue is proper as this action was originally brought in the Circuit Court of the Second Circuit, State of Hawaii. 28 U.S.C. §§ 1441(a); 1446(a).
6. Hawaiian Electric has not yet filed or served a response to the Complaint. *See* Decl. of Joseph A. Stewart ¶ 4.

7. A copy of all process, pleadings, and orders that Hawaiian Electric has received (other than the Complaint) in the State Action is attached as **Exhibit “B”**. Decl. of Joseph A. Stewart ¶ 5; *see also* 28 U.S.C. § 1446(a).

BASIS FOR FEDERAL QUESTION JURISDICTION

8. Plaintiff claims that Hawaiian Electric’s alleged predecessor in interest (“**Molokai Electric**”) violated the federal Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9607 *et seq.*

9. Plaintiff asserts such violations based on its allegations that Molokai Electric released hazardous substances, and failed to remediate the release(s), on property it sold to Plaintiff. Exhibit “A” ¶¶ 1, 7, 8, 32–33.

10. Plaintiff also seeks a declaratory judgment of liability for response costs under CERCLA and the federal Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, for Hawaiian Electric’s alleged failure to deliver the property in a remediated and safe condition. Exhibit “A” ¶¶ 46–49.

11. This Court has original federal question jurisdiction over this action because it arises under the laws of the United States. 28 U.S.C. § 1331.

12. Further, CERCLA provides that U.S. District Courts have “exclusive original jurisdiction over all controversies arising under this chapter.” 42

U.S.C. § 9613(b). Therefore, “state courts lack jurisdiction over such actions.” *Atl. Richfield Co. v. Christian*, 140 S.Ct. 1335, 1349 (2020).

SUPPLEMENTAL JURISDICTION

13. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction of all other claims alleged in the Complaint because they are so related to the claims arising under federal law that they form part of the same case or controversy under Article III of the United States Constitution. *See* Ex. “A” ¶¶ 38–42, 55, 60–61.

NOTICE OF REMOVAL

14. Hawaiian Electric will serve this Notice of Removal on Plaintiff and file it with the Clerk of the Circuit Court of the Second Circuit, State of Hawaii.

WHEREFORE, Defendant HAWAIIAN ELECTRIC COMPANY, INC. requests that the State Action, Civil No. 2CCV-21-0000362, be removed to the United States District Court for the District of Hawaii.

DATED: Honolulu, Hawaii, December 30, 2021.

/s/ Joseph A. Stewart

JOSEPH A. STEWART

AARON R. MUN

STEPHEN G.K. KANESHIRO

Attorneys for Defendant

HAWAIIAN ELECTRIC COMPANY, INC.